Nov. 28

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1926.

No. 80

NETTIE I. SIMONSON, ETTIE B. SIMONSON, AND FARMERS LOAN & TRUST COMPANY, ETC., PLAINTIFFS IN ERROR,

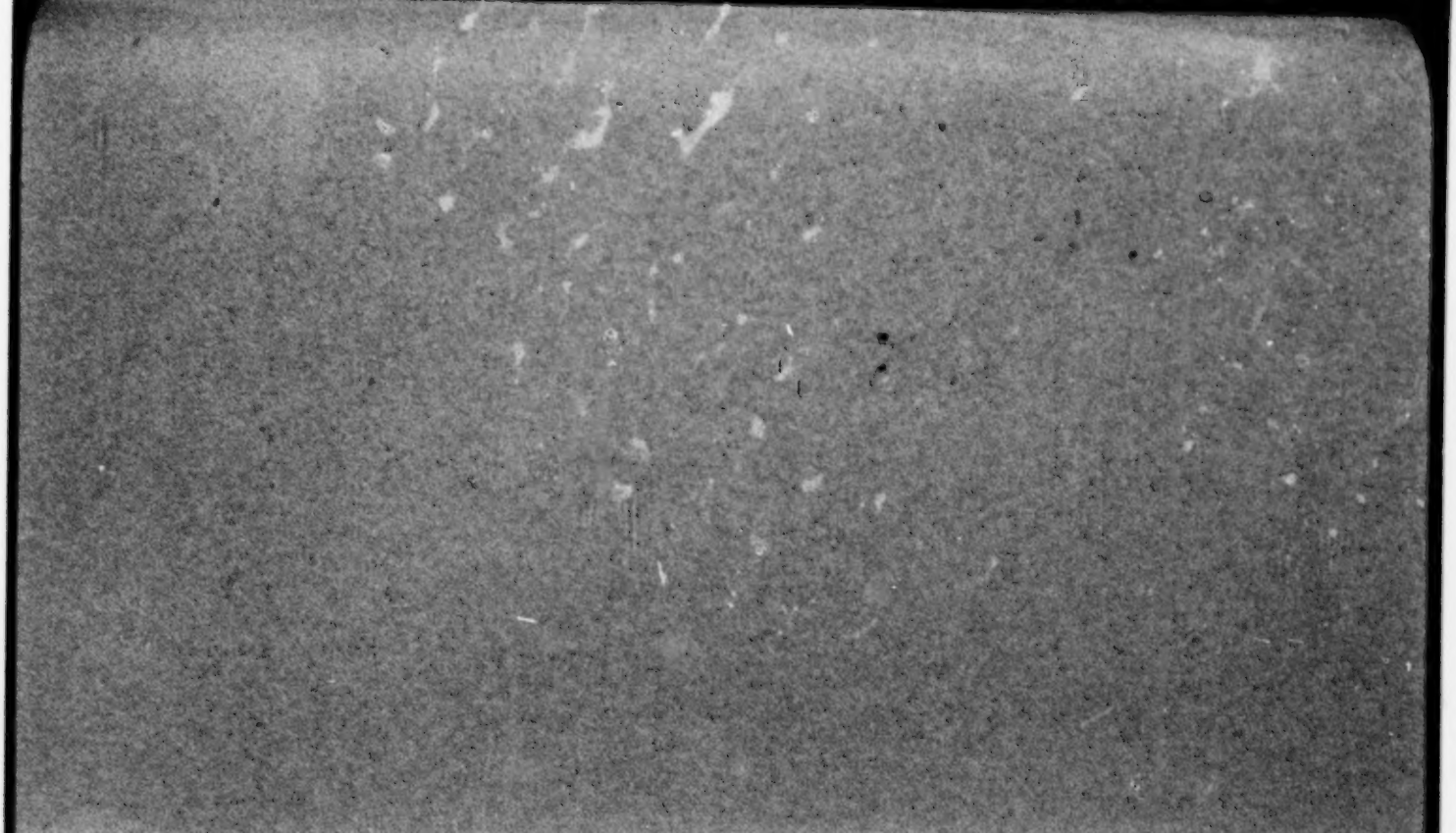
vs.

STATE TAX COMMISSION OF NEW YORK

IN ERROR TO THE SURROGATE'S COURT OF NEW YORK COUNTY, STATE OF NEW YORK

FILED FEBRUARY 17, 1926

(33,262)



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[fol. a]

IN SURROGATES' COURT OF NEW YORK COUNTY

CLERK'S CERTIFICATE

STATE OF NEW YORK,
County of New York, ss:

I, Martin G. McCue, Clerk of the Surrogates' Court of the County of New York, pursuant to a writ of error directed to the Honorable the Surrogates of the Surrogates' Court of the County of New York, State of New York, which said writ was allowed by the Honorable Benjamin N. Cardozo, Chief Judge of the Court of Appeals of the State of New York, and was issued by the Clerk of the United States District Court for the Southern District of New York, on the 7th day of February, 1928, do hereby certify the writing hereto attached to be a true, complete and perfect copy of the remittitur of the said Court of Appeals to the said Surrogates' Court of the County of New York, including therein the printed record used in the said Court of Appeals, the order on the remittitur of the said Court of Appeals, and the bond on writ of error, in the proceedings entitled "In the Matter of the Transfer Tax on the Estate of Albert Simonson, deceased," as the same remains on file and on record in said matter in my office. That attached to said papers are the petition for Writ of error, assignment of errors, order of allowance of writ of error, citation with admission of service thereof, writ of error, affidavit of no opinion and stipulation re transcript of record, all filed in the office of this Court, and the same are the originals thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of the Surrogates' Court of the County of New York, this 24th day of February, 1928.

Martin G. McCue, Clerk of the Surrogates' Court.
(New York Surrogate's Seal.)

[fol. b] IN COURT OF APPEALS OF NEW YORK

REMITTITUR—November 23, 1927

[fol. c] In the Matter of The Transfer Tax Upon the Estate of ALBERT SIMONSON, Dec'd.

Be it Remembered, That on the 21st day of June in the year of our Lord one thousand nine hundred and twenty-seven, Nettie I. Simonson and others, as Executors, the appellants in this cause, came here unto the Court of Appeals, by Cohen, Gutman & Richter, their attorneys, and filed in the said Court a Notice of Appeal and return thereto from the order of the Appellate Division of the Supreme Court in and for the First Judicial Department, And State Tax Commission, the respondents in said cause, afterwards in said Court of Appeals by Charles A. Curtin, its attorney.

Which said Notice of Appeal and the return thereto, filed as aforesaid are hereunto annexed.

[fol. d] Whereupon, The said Court of Appeals having heard this cause argued by Mr. Abraham L. Gutman, of counsel for the appellants, and by Mr. Seth T. Cole, of counsel for the respondents, and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed with costs.

And it was also further ordered, that the record aforesaid, and the proceedings in this Court, be remitted to the Surrogates' Court, there to be proceeded upon according to law.

[fol. e] Therefore, It is considered that the said order be affirmed with costs as aforesaid. And hereupon, as well as the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Surrogates' Court, New York County, before the Surrogates thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Surrogates' Court, before the Surrogate thereof, &c.

Wm. J. Armstrong, Clerk of the Court of Appeals of the State of New York.

Court of Appeals, Clerk's Office, Albany

November 23, 1927.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

Wm. J. Armstrong, Clerk. (Seal Court of Appeals, State of New York.)

[fols. f-i] Clerk's certificate to foregoing paper omitted in printing.

[fol. 1] In Supreme Court of New York, Appellate Division, First Department

In the Matter of the Transfer Tax on the Estate of Albert Simonson, Deceased; Nettie I. Simonson et al., as Executors, Appellants; State Tax Commission of New York Respondent

Statement under Rule 234

This proceeding was commenced by the filing of a petition of the Executors of decedent's estate to the Surrogates' Court of New York County to fix and assess a transfer tax upon the estate of the decedent.

The matter was duly referred to Maurice A. Stephenson, Esq., Appraiser, before whom Charles A. Curtin, Esq., appeared as attorney for the State Tax Commission, and Cohen, Gutman & Richter, Esqs., as attorneys for the Executors.

Such proceedings were had that a report was made to the Surrogates' Court by said Appraiser and upon said report an order was entered on the 24th day of August, 1926, fixing and assessing the tax upon the estate of the decedent. From said order an apepal was taken to the Surrogate of New York County, and upon said appeal an order was entered on the 15th day of October, 1926, denying the appeal and affirming the said order. From

this order denying the appeal and affirming the order, an appeal is taken to this Court.

There has been no change of parties or attorneys.

[fol. 2] In Surrogates' Court of New York County

In the Matter of the Transfer Tax on the Estate of Albert Simonson, Deceased

Notice of Appeal to Appellate Division

Sirs: Please take notice that the executors of the above named estate hereby appeal to the Appellate Division of the Supreme Court of the State of New York, First Department, from the order of the Surrogate of the County of New York heretofore made and entered herein on the 15th day of October, 1926, affirming the order theretofore made and entered on the 24th day of August, 1926, fixing and assessing the tax upon the transfer of the property of the said decedent under the law relating to taxable transfers of property and from each and every part of said order.

Dated October 18th, 1926.

Cohen, Gutman & Richter, Attorneys for Executors, 111 Broadway, New York City.

To Charles A. Curtin, Esq., Attorney for State Tax Commission; Clerk of the Surrogates' Court of the County of New York.

[fol. 3] In Surrogates' Court of New York County

[Title omitted]

Order Denying Appeal—Oct. 15, 1926

An appeal having been taken to this Court by the executors in the above named estate from the pro forma order entered in the Surrogates' Court on the 24th day of August, 1926, and said appeal having come on to be heard, and after hearing Cohen, Gutman & Richter, attorneys for the executors, and Charles A. Curtin, attorney for the State Tax Commission, in opposition, it is

Ordered and adjudged that the appeal be and the same is hereby denied, and the order fixing tax affirmed.

James A. Foley, Surrogate.

[fol. 4] In Surrogates' Court of New York County

[Title omitted]

Order Assessing Tax—Aug. 24, 1926

On reading the report filed on the 18th day of August, 1926, of Maurice A. Stephenson, the appraiser appointed by order of this Court dated the 1st day of July, 1926, and it appearing that the said decedent died on the 29th day of December, 1925, it is

Ordered and adjudged that the cash value of the property referred to in said report the transfer of which is subject to the tax imposed by the act relating to taxable transfers and the tax to which the transfers are liable are as follows:

	Amount received	Amount of exemption	Amount received	Taxable amount
Ettie B. Simonson	$120.721	$5,000	$115.721	$2,221.63
Nettie I. Simonson	120.721	5,000	115.721	2,221.63
Executors for the benefit of Persons of the 1% Class, Full Undiminished Value of above fund	320,083.37	0	$320,083.37	$9,553.33

John P. O'Brien, Surrogate.

[fol. 5] In Surrogates' Court of New York County

[Title omitted]

Notice of Appeal to Surrogate from Order Assessing Tax

Sirs: Please take notice that the executors of the above named estate are dissatisfied with the appraisal herein of the property of the above named decedent as made and set forth in the report of the appraiser filed herein on the 18th

day of August, 1926, and with the order fixing and assessing the transfer tax in respect to the transfer of the property of the said decedent made and entered herein on or about the 24th day of August, 1926, and hereby appeal to the Surrogate from the said appraisal and from the said order assessing the tax as aforesaid on the ground that the taxation of the remainder of the trust fund of $320,083.37, after the life estate therein granted, as its full undiminished value, is confiscatory, arbitrary and discriminatory, and constitutes a taking of property without [fol. 6] due process of law and without just compensation and is, therefore, in violation of the Constitutions of the State of New York and of the United States.

Dated New York, September 22nd, 1926.

Cohen, Gutman & Richter, Attorneys for Executors,
111 Broadway, New York, N. Y.

To Martin G. McCue, Esq., Clerk of the Surrogates' Court, County of New York; Charles A. Curtin, Esq., Attorney for State Tax Commission, 220 West 40th Street, New York, N. Y.

[fol. 7] In Surrogates' Court of New York County

[Title omitted]

Appraiser's Report

To the Surrogates' Court of the County of New York:

I, Maurice A. Stephenson, Transfer Tax Appraiser, having been designated by Hon. James A. Foley, Surrogate of the County of New York, by an order duly made and entered on the 1st day of July, 1926, to appraise the estate of the above-named decedent, pursuant to the provisions of the Law relating to taxable transfers of property, and the statutory notice by mail having been duly given herein to all the persons entitled thereto as provided in Section 230 of the Tax Law as appears by copy of such notice and affidavit of mailing thereof hereunto annexed, and having held an appraisal on the 10th day of August, 1926, at the office of the Transfer Tax Appraiser for the County of New York, and having heard the allegations and proofs

of the parties then and there appearing before me and [fol. 8] offering the same, and having given due consideration to the affidavits and other papers submitted herein, and having made due and careful inquiry into all the matters and things brought before me in this proceeding, do now make and file the following report:

First. I report that the decedent herein died a resident of the State of New York on the 29th day of December, 1925, leaving a Last Will and Testament, copy of which is hereunto annexed, which was duly admitted to probate by this Court on the 27th day of January, 1926, and that thereafter on the 27th day of January, 1926, Letters Testamentary upon the estate of the said decedent were duly issued by this Court to Ettie B. Simonson, 525 West End Avenue, New York City; Nettie L. Simonson, 525 West End Avenue, New York City; Farmers' Loan & Trust Co., 22 William Street, New York City, as executors.

Second. I further report the following appearances in this proceeding: Charles A. Curtin, Esq., Attorneys for State Tax Commission, 220 West 40th Street, New York City, Cohen, Gutman & Richter, Esqs., Attorneys for Executors, 111 Broadway, New York City.

[fol. 9] Third. I further report that I found the property left by the decedent herein or in which said decedent had any beneficial interest or appointed or transferred in contemplation of death, by decedent, to consist of the items set forth in the annexed affidavit for appraisal, and that the fair market value of each of the said items at the date of decedent's death is the amount set down by me opposite such items in the column designated "Value as appraised in this proceeding," and that the sums properly to be allowed as deductions herein for funeral expenses, expenses of administration, debts of decedent, etc., are the amounts set down by me after the several items claimed in the column designated "Allowed in this proceeding," as a result of which I find the said assets and deductions to be as shown in the following summary:

Assets

Schedule A—Real Estate	$350,000 00
Schedule B—Cash	12,966 43
Schedule C—Personal Effects	640 00
Schedule D—Mortgages, Notes and Accounts	0
Schedule E—Insurance	0
Schedule F—Stocks and Bonds	0
Schedule G—Partnerships or Business Interests	0
Schedule H—Gifts and Transfers	0
Schedule I—Powers of Appointment	0
Schedule J—Interest in other estates	0
Schedule K—Other property	0
Gross assets	$363,606 43

[fol. 10] Subject to Deductions as follows:

Schedule L—Funeral and Administration	$8,659 07	
Schedule M—Debts	1,855 15	
Schedule N—Other deductions	0	
Commissions	374 16	
Total deductions		$10,888 38
The total of all property passing upon the death of the decedent I appraise at		$352,718 05

Fourth. I further report all the beneficiaries entitled at the time of decedent's death to an interest in this estate pursuant to the provisions of Law, and of the said decedent's Last Will and Testament, the relationship of such persons to decedent, the amount of the share or interest of each, and whether such share or interest is taxable in this proceeding, to be as hereinafter set forth, all of said beneficiaries of full age and sound mind except as otherwise designated.

[fol.11] Appraiser's Report

Beneficiaries—Relationship	Amount of interest	Amount of exemption	Amount of interest taxable
Ettie B. Simonsin (Daughter):			
¼ Jewelry	$320.00		
Joint and surviving life estate in.... $340,578.15			
Less Trustees' Commissions 20,494.68			
$320,083.37			
Present Value.....	120,401.00		
	120,721.00	5,000.00	115,721.00
Leo B. Simonson (Son):			
Legacy	5,000.00	5,000.00	0.00
Felix A. Simonson (Son):			
Legacy	5,000.00	5,000.00	0.00
Federation of Jewish Charities:			
Bequest	1,000.00	1,000.00	0.00
Salem Fields Cemetery Society of the Temple Emanuel:			
Bequest	500.00	500.00	0.00
Nettie I. Simonson (Daughter):			
¼ Jewelry.....	320.00		
Joint and surviving life estate..... $340,578.05			
Less Trustees' Commissions (3).... 20,494.68			
$320,083.37			
Present Value.....	120,401.00		
	120,721.00	5,000.00	115,721.00
To Executors for the Benefit of Persons of the 1% Class:			
Full undiminished value of of above fund.....	320,083.37	0	320,083.37

Respectfully submitted,

Dated New York, N. Y. Maurice A. Stephenson, Appraiser.

[fol. 12] In Surrogates' Court of New York County

[Title omitted]

Order Designating Transfer Tax Appraiser—July 1, 1926

On reading and filing the petition of the Farmers' Loan & Trust Company, one of the executors of the estate of said decedent, I do hereby, pursuant to the requirement of

Section 230 of Article X of the Tax Law, direct Maurice A. Stephenson, Esq., one of the appraisers appointed by the State Tax Commission under said statute, to fix under Article X, Chapter 60, of the Consolidated Laws of 1909, and the Acts amendatory thereof and supplemental thereto, the fair market value of the property which was of the above-named decedent, to declare the value of such interest or interests therein as may be subject to the payment of the transfer tax, to declare exempt from such tax such interest or interests as he may find to be exempt, and to do such other thing or things in the premises as he may be authorized to do by virtue of his office under the said provision of law.

James A. Foley, Surrogate.

[fol. 13] In Surrogates' Court of New York County

[Title omitted]

Petition for Designation of Transfer Tax Appraiser

To the Surrogates' Court of the County of New York:

The petition of Farmers' Loan & Trust Company respectfully shows:

First. That your petitioner, Farmers' Loan & Trust Company, is one of the executors of the estate of Albert Simonson, deceased, and as such is interested in the estate of the said deceased.

Second. That the said decedent departed this life on the 29th day of December, 1925, at New York; that the said deceased was a resident of New York County.

Third. That letters testamentary on the estate of said deceased were, on the 27th day of January, 1926, issued to your petitioner, Nettie I. Simonson and Etta B. Simonson by the Surrogates' Court of the County of New York, and [fol. 14] that their post office addresses are Farmers' Loan & Trust Company, 22 William Street, New York, N. Y.; Nettie I. Simonson and Etta B. Simonson, 565 West End Avenue, New York.

Fourth. That, as your petitioner is informed and believes, the transfer of the property of said decedent, or some portion thereof or some interest therein, is or may be subject to the payment of the tax imposed by the law in relation to taxable transfers of property.

Fifth. That all persons who are interested in said estate and who are entitled to notice of all proceedings herein, and their post office addresses, are as follows: The State Tax Commission; Nettie I. Simonson, 505 West End Ave., New York, N. Y.; Ettie B. Simonson, 505 West End Ave., New York, N. Y.; Leo B. Simonson, 317 West 89th St., New York, N. Y.; Felix A. Simonson, 924 West End Ave., New York, N. Y., Carryl E. Simonson, 317 West 89th St., New York, N. Y.; Albert C. Simonson, 317 West 89th St., New York, N. Y.; Federation of Jewish Charities, 114 Fifth Ave., New York, N. Y.; Salem Fields Cemetery Society of Temple Emanuel, 775 Jamaica Ave., Brooklyn, N. Y.

[fol. 15] That all the above named are of full age and sound mind except Carryl E. Simonson and Albert C. Simonson.

That the gross value of the estate of the decedent, wherever situated, is more than $10,000.

That no previous application has been made for an order granting the relief prayed for in this petition.

That there are no persons other than those herein mentioned, interested in this proceeding.

Wherefore your petitioner prays that you will designate an appraiser, as provided by law, to fix, under Article X, Chapter 60, of the Consolidated Laws of 1909, and the Acts amendatory thereof and supplemental thereto, the fair market value of the property which was of the above-named decedent, to declare the value of such interest or interests therein as may be subject to the payment of the transfer tax, to declare exempt from such tax such interest or interests as he may find to be exempt, and to do such other thing

or things in the premises as he may be authorized to do by virtue of his office under the said provision of law.

Dated New York, June 30th, 1926.

Farmers' Loan & Trust Company, Petitioner, by W. A. Duncan, Vice-President.

[fol. 16] *Duly sworn to by Wm. A. Duncan. Jurat omitted in printing.*

[fol. 17] In Surrogates' Court of New York County

[Title omitted]

Affidavit and Schedules

State of New York,
County of New York, ss:

Nettie I. Simonson, Ettie B. Simonson, Farmers' Loan & Trust Company, executors of the estate of the above-named decedent, being duly sworn in this proceeding for the determination of the tax, if any, to be paid upon the assets of the said estate under the Law in Relation to Taxable Transfers of Property, deposes and says that as such executors deponents are personally familiar with affairs of the said estate, the property constituting the assets thereof, their fair market value, and the debts, expenses and charges properly allowable as deductions therefrom, and makes the following return:

General Information

1. Date of death: December 29th, 1925.

2. Resident of New York County.

[fol. 18] 3. Did the decedent leave a will? Yes.

4. Letters of administration, testamentary, were issued on January 27th, 1926, by the Surrogates' Court of New York County.

5. The names and post office addresses of the executors are: Ettie B. Simonson, 525 West End Ave., New York; Nettie I. Simonson, 525 West End Ave., New York; Farmers' Loan & Trust Co., 22 William Street, New York.

Property in the Estate

Schedule A—Real Estate:

6. Did the decedent at the time of death own any interest in real estate located within the State of New York, individually or jointly? Yes.

Schedule B—Cash:

7. Did the decedent at the time of death own any cash or have any money on deposit individually or jointly? Yes.

Schedule C—Personal Effects:

8. Did the decedent at the time of death own any wearing apparel, jewelry, silverware, pictures, books, works of art, household furniture, horses or other live stock, carriages, automobiles, boats, or any other personal chattels of whatever kind or nature, including leases on real estate, wheresoever located? Yes.

[fol. 19] Schedule D—Mortgages, Notes and Accounts:

9. Did the decedent at the time of death own any interest in bonds or mortgages, notes or accounts receivable, individually or jointly? No.

Schedule E—Insurance:

10. Was any life insurance receivable by the executor? No.

Schedule F—Stocks and Bonds:

11. Did the decedent at the time of death own any stocks or bonds or rights to subscribe thereto? No.

Schedule G—Partnership or Business Interests:

12. Did the decedent at the time of death own any interest in a partnership or an unincorporated business? No.

Schedule H—Gifts and Transfers:

13. (a) Did the decedent, during the period within two years prior to his death, make any transfer of property by

way of gift or without a fair consideration in money or money's worth? No.

(b) Did the decedent, at any time prior to two years before his death, make any transfer or create any trust in contemplation of or intended to take effect at or after death or in which he reserved to himself a life interest, without consideration? No.

(c) Were any trusts created by the decedent in existence at the time of death? No.

[fol. 20] (d) Did the decedent create any trust in which he had solely or with another the power of revocation? No.

Schedule I—Powers of Appointment:

14. Did the decedent have any power of appointment of property in any other estate? No.

Schedule J—Interest in Other Estates:

15. (a) Did the decedent at the time of death own any interest in any other estate? No.

(b) Did any remainder or reversion fall in or vest in possession or enjoinment by reason of the decedent's death? No.

Schedule K—Other Property:

16. Did the decedent at the time of death own any miscellaneous property not included or accountable under any other schedule? No.

Deductions

Schedule L—Funeral and Administration Expenses:

17. Itemize the funeral expenses and administration expenses in Schedule L, following the instructions for that schedule.

Schedule M—Debts:

18. Itemize the debts of decedent in Schedule M, following the instructions for that schedule.

Schedule N—Other Deductions:

19. Itemize in Schedule N all items claimed by the administrator executor as proper deductions herein and not [fol. 21] included in prior schedules, following the instructions for that schedule.

Schedule O—Beneficiaries:

20. Give in Schedule O a statement of the names of all persons beneficially interested in the estate, the nature of their respective interests, etc., following the instructions for that schedule.

Did any of the beneficiaries named in the decedent's will, if any, die prior to the decedent?

If the answer is "yes" designate in Schedule O which beneficiary died prior to the decedent and show his survivors, and the relationship of such survivors to the decedent.

General Affidavit

21. Deponent states that he has made a due and diligent search for property of every kind, nature and description left by the decedent, and has been able to discover only that set forth in the schedules accompanying this return and that no information of any other property of the decedent has come to the dependent's knowledge, and that the deponent verily believes the decedent left no property except as herein set forth; that Schedule A sets forth all the real estate in which the decedent at the time of death had any interest either individually or jointly with another; that Schedule B shows all cash or money which the decedent had on hand or on deposit, individually or jointly; that Schedule C shows all the personal effects, wearing apparel, jewelry, silverware, pictures, books, works of art, household furniture, horses or other live stock, carriages, automobiles, boats or any other personal chattels of whatever kind and nature, including leases on real estate wherever [fol. 22] located; that Schedule D sets forth all mortgages held by the decedent and all claims due and owing to the decedent at the time of death, and all promissory notes or other instruments in writing for the payment of money in which the decedent died possessed; that Schedule E sets

forth any and all life insurance payable to the estate; that Schedule F sets forth all the corporate stocks, bonds and other securities owned by the decedent at the time of death; that Schedule G sets forth the interest of the decedent at the time of death in any co-partnership or business; that Schedule H sets forth all property wheresoever situated, of which the decedent at any time made any grant, bargain sale or gift in contemplation of death, or intended to take effect in possession or enjoyment at or after the death of the decedent, and all the transfers made within two years prior to the death without a valid and adequate consideration, and all trusts in which the decedent had solely or with another the power of revocation, and that the decedent made no gifts or transfers except as stated therein; that Schedule I sets forth all property over which the decedent had a power of appointment, whether such power was exercised or not; that Schedule J sets forth the interest of the decedent in any estate of another; that Schedule K sets forth any and all property owned by the decedent in which he had any right or interest whatsoever which was not set forth in the preceding schedules; that the deponent has carefully read the instructions printed on this form and that all the answers contained therein are in accordance with such instructions; that to the best of deponent's knowledge and belief the value shown for each item of property [fol. 23] listed herein is the actual and full value at the time of decedent's death, and that the debts, expenses and charges entered herein as deductions from the gross estate are correct and legally allowable, and are not contested by the estate except as stated in the schedules.

22. The deponent further states that wherever in any part of this return or in any schedule the words "none" or "no" have been written, or wherever such schedule or any query has been left blank, such word or omission is to be taken as equivalent to an affirmative allegation by deponent that the decedent left no property of any kind to which the schedule relates.

Nettie I. Simonson, Ettie B. Simonson, M. E. Cardozo.

Severally sworn to before me this 18th day of May, 1926. Bessie Aaronson, Notary Public, Kings County. Clerk's No. 39. Register's No. 8030. N. Y. Co. Clerk's No. 36. Reg. No. 8027. Commission expires March 30, 1928. (Seal.)

Sworn to before me by M. E. Cardozo this 4th day of June, 1926. Bessie Aaronson, Notary Public, Kings County. Clerk's No. 39. Register's No. 8030. N. Y. Co. Cl'k's No. 36. Reg. No. 8027. Commission expires March 30, 1928.

[fol. 24]

Schedule A

Plot of land and six story and basement business building situated on the west side of Fifth Avenue north of 36th Street, having a frontage of twenty-seven (27) feet seven and one-half (7½) inches on Fifth Avenue, the southerly line being one hundred and twenty-five (125) feet and the northerly line one hundred twenty (120) feet, and known as No. 398 Fifth Avenue; deed to said premises recorded in the office of the Register of New York County on the 10th day of November, 1908, in liber 142 of conveyances, page 432; said property subject to a mortgage of $200,000, which mortgage expires November 1st, 1927	$350,000 00

Schedule B

Cash	$12,966 43

Schedule C

Jewelry	$640 00

Schedule D

None.

Schedule E

None.

[fol. 25] **Schedule F**

None.

Schedule G

None.

Schedule H

(See statement annexed.)

Schedule I

None.

Schedule J

None.

Schedule K

None.

[fol. 26] **Schedule L**

Funeral Expenses:	
Charles N. Pollak, undertaker	$857.40
Rev. Simon Schlager	25.00
Levy Bros., death notices, etc.	16.48
Administration Expenses:	
Clerk's fees filing petition, probate of Will	10.00
Certificates of letters testamentary	1.50
Certified copies of orders and miscellaneous expenses	8.69
Bannon & Shannon Co., appraisal of jewelry	35.00
Bannon & Shannon Co., appraisal	75.00
Friend-Wiener Donohue Advertising Co. Inc., publishing notice to creditors	90.00
Brown, Wheelock, Harris, Vought & Co., appraisal real estate	40.00
Executors' commissions, estimated (3)	21,876.36
Attorneys' fees, estimated	7,500.00
Total	$30,535.43

[fol. 27]

Schedule M

Debts:

Consolidated Gas Company	$15 18
P. M. Everts, drugs	24 24
New York Telephone Company	7 73
Dr. J. E. Reinthaler, professional services	308 00
Liability under lease of apartment, premises No. 525 West End Ave., N. Y., lease expires October 1st, 1927, at $5,200 a year	1,500 00
Total	$1,855 15

Schedule H

The decedent within two years prior to his death executed and delivered to his daughters a bill of sale of all of his furniture and personal effects.

That long prior to the execution and delivery of the said bill of sale, the decedent gave to his daughters all of his furniture and personal effects. The executors claim that this gift was not made by decedent in contemplation of or to take effect at his death.

The value of the furniture, etc., at the time of decedent's death was $2,808.55.

[fol. 28]

Schedule O

Name	Address	Relationship	Interest
Ettie B. Simonson	525 West End Ave. New York, N. Y.	Daughter	½ jewelry and household effects and life beneficiary in ½ res. estate.
Nettie I. Simonson	525 West End Ave., New York, N. Y.	Daughter	½ jewelry and household effects and life beneficiary in ½ res. estate.
Leo B. Simonson	317 West 89th St. New York, N. Y.	Son	$5,000.
Felix A. Simonson	924 West End Ave. New York, N. Y.	Son	$5,000 and a contingent interest in ¼ res. estate.
Federation of Jewish Charities	114 Fifth Ave. New York, N. Y.		$1,000.
Salem Fields Cemetery Society of the Temple Emanuel	775 Jamaica Ave. Brooklyn, N. Y.		$500.

Carryl E. Simonson	317 West 89th St. New York, N. Y.	Granddaughter	Contingent interest in residuary estate subject to terms of the Will.
Albert C. Simonson	317 West 89th St. New York, N. Y.	Grandson	Contingent interest in residuary estate subject to terms of the Will.

[fol. 29] In Surrogates' Court of New York County

[Title omitted]

Affidavit Appraising Real Property

State of New York,
County of New York, ss:

Francis K. Stevens, being duly sworn, deposes and says that he is Vice-President and an appraiser in charge of appraisals of Brown, Wheelock, Harris, Vought & Co., Inc., a corporation of the State of New York, doing a general real estate business and appraising, having a main office for the transaction of business at No. 14 Wall Street, in the City of New York;

That he has been actively engaged in the business of real estate and appraising of property in New York City for twenty-five years last past;

Deponent further states that at the request of The Farmers' Loan & Trust Company, he made an appraisal of the property known as No. 398 Fifth Avenue, New York City, being a plot of land situated on the west side of Fifth Avenue, 73 feet north of 36th Street, having a frontage of 27 feet, 7½ inches on Fifth Avenue, the southerly line being 125 feet and the northerly line 120 feet, the rear line being irregular, on which there stands a six story and basement business building, which property is leased until 1931 at [fol. 30] $38,000 net, the lessee having the right to two renewals of 21 years each at a rental to be based on 4½% of the value of the land and building, and valued the same, subject to this lease, as of December 29th, 1925, at Five Hundred and Fifty Thousand ($550,000) Dollars;

That he made this appraisal with the full knowledge that the property was assessed for the purpose of taxation for the year 1925 at $505,000.

Deponent further states that he considers this lease with its renewals of 4½%, a distinct detriment to the value of the property, and he is convinced from his knowledge of sales and rentals of property in this immediate neighbor-

hood that the fair market value of this property, subject to the lease, is as he has valued it.

Francis K. Stevens.

Sworn to before me this 3rd day of March, 1926. Carl W. Schwenk, Notary Public, Queens County, No. 3688. Certificate filed in New York Co. No. 797. Register's Office New York Co. No. 7639. My commission expires March 30, 1927. (Seal.)

[fol. 31] In Surrogates' Court of New York County

[Title omitted]

Affidavit and Appraisal of Jewelry

State of New York,
County of New York, ss:

Thos. J. Bannon, being duly sworn, deposes and says:

That he is one of the firm of Bannon-Shannon Co., Appraisers of Real and Personal Property, with offices located at 99 John Street, in the City of New York and Borough of Manhattan.

That he has had many years experience in appraising Personal Property of the character described in the annexed Schedule and has bought and sold Jewelry as found herein.

That at the request of the attorneys herein he has, with the assistance of Robert Stoll, appraised the Personal Property in the annexed Schedule at its true and fair market [fol. 32] value as of date of the decedent's death, December the 29th, 1925.

Thos. J. Bannon.

Sworn to before me this 8th day of February, 1926. E. M. Shannon, Commissioner of Deeds. N. Y. County Clerk's No. 225. N. Y. County Register's No. 27091. Expires March 31, 1927.

Personal Property Contained in Safe-Deposit Box at Farmers Loan & Trust Co. at 9 E. 38 Street, N. Y. C.

4 Vest buttons, platinum edge, pearl setting 1 Pair of link cuff buttons, platinum edge, pearl setting	$50 00
1 Oriental pearl and diamond cluster scarf pin	65 00
1 Diamond gypsy ring, 7sK	150 00
3 Diamond shirt studs	375 00
Totals for property contained in box at the Farmer's Loan & Trust Co., 9 E. 38 Street, New York City	$640 00

[fol. 33] In Surrogate's Court of New York County

[Title omitted]

Affidavit of Ages of Trust Beneficiaries

State of New York,
County of New York, ss:

Leo Simonson, being duly sworn, deposes and says: I am the brother of Nettie I. and Ettie B. Simonson. They are twin sisters and were born on September 25th, 1880. My father died on the 29th day of December, 1925. My sisters are at present travelling in Europe.

Leo B. Simonson.

Sworn to before me this 16th day of July, 1926.
Max C. Gavies, Notary Public, New York Co., = 18.
(Seal.)

[fol. 34] In Chambers of the Surrogates' Court of New York County

Estate of Albert Simonson, Deceased

Request to Superintendent of Insurance for Value of Life Estates

Date of Death: Dec. 29th, 1925.

New York, July 20th, 1926.

Dear Sir: In pursuance of Chapter 483, Laws of 1885, and the acts amendatory thereof and supplemental thereto, you are hereby requested to determine and ascertain the values of the following Estates, Annuities and Interest.

Name, Ettie Simonson; Age, 45; Legacy or Estate: Joint and surviving life estate in—Value or Amount, $320,083.37.

Name: Nettie Simonson; Age, 45; Legacy or Estate: Joint and surviving life estate in—Value or Amount, $320,083.37.

P. V. of each $120,401.

Wanted: Present value.

Yours respectfully, Maurice A. Stephenson, Esq., Appraiser.

To the Superintendent of Insurance Department, State of New York.

Return to Transfer Tax Bureau, 220 W. 40th St., New York City.

Attention of Miss McGraw.

[fol. 35] In Surrogate's Court of New York County

Estate of Albert Simonson, Deceased

Return of Superintendent of Insurance Stating Value of Life Estates

State of New York Insurance Department, Albany

July 21, 1926.

Dear Sir: In reply to your application of July 20th, I hereby certify to the present values requested as follows:

Name, Ettie Simonson; Legacy, Joint and surviving life estate in $320,083.37—Present Value Dec. 29, 1925, $120,401.

Name, Nettie Simonson; Legacy, Joint and surviving life estate in $320,083.37—Present Value Dec. 29, 1925, $120,401.

Yours very truly, James a Beha, Superintendent.

To Maurice A. Stephenson, Esq., Appraiser, New York County, New York City, N. Y.

Mailed to Managing Clerk, Transfer Tax Bureau, 220 W 40th Street, New York City.

Attention of Miss McGraw.

[fol. 36] In Surrogates' Court of New York County

Decedent's Last Will and Testament

I, Albert Simonson, of the City of New York, declare this to be my Last Will and Testament, hereby revoking all former wills:

First

I direct my executors hereinafter named to pay, as soon as conveniently after my death, all of my just debts including funeral and testamentary expenses.

Second

All of my jewelry, furniture and household effects, I give to my two daughters, Ettie B. Simonson and Nettie I. Simonson, share and share alike.

Third

I give to each of my sons, Leo B. Simonson and Felix A. Simonson, the sum of Five Thousand Dollars ($5,000.00).

I make no further provision for said sons herein, not that I love them any less than my daughters, but because I have already given to them my business and my primary object must be to care for my daughters during their lives.

Fourth

I give to the Federation of Jewish Charities in the City of New York the sum of One Thousand Dollars ($1,000.00). [fol. 37] I give to Salem Fields Cemetery Society of the Temple Emanuel the sum of Five Hundred Dollars ($500.00) to apply the income in keeping my plot in good order.

Fifth

All of the rest of my property, real and personal, I give and devise unto my executors hereinafter named, in trust nevertheless, to invest the same and to pay the net rents and income thereof to my daughters, Ettie B. Simonson and Nettie I. Simonson, during their lives in equal shares, and upon the death of either daughter, to pay the entire net rents and income thereof, to my surviving daughter for the balance of her life. Upon the death of both daughters, my said trustees shall pay and divide the principal to and among my grandchildren in such manner that the issue of each of my children shall together take one portion. If my son Felix shall not have any issue living at the time of the death of the survivor of my daughters as aforesaid but shall himself be alive, then he, Felix, shall receive one portion in the division of said principal.

In all cases the issue of any deceased grandchild shall take the share of its parent.

I declare that my son Leo is the only one who now has issue, it is my intention that his issue shall together take one portion of said principal, and similarly the issue of any other child shall take one portion; but that if my son Felix shall not have any issue living at the time of the death of my surviving daughter but shall himself be still living, then he shall taken an equal portion instead of his issue.

[fol. 38] Sixth

I direct that all inheritance and transfer taxes shall be paid out of the capital of my estate and not charged against any legacy, absolute or in trust.

Seventh

I direct that the entire income of each trust legacy shall be paid to the beneficiary of the trust without deduction

for amortization, and my executors shall not be liable for any depreciation in value of any securities in consequence of their being exchanged or redeemed at par at maturity or for any other reason.

Eighth

I empower my said executors to sell, at public or private sale, exchange or otherwise dispose of the whole or any part of my real or personal property, including any real estate acquired by them after my death, in such manner and upon such terms as to credit or otherwise as they, in their discretion may deem best, with power to accept purchase money mortgage or mortgages for the whole or any part of the purchase or exchange price; also to mortgage, lease, alter, repair or improve the same as to them may deem expedient. I authorize my said executors to lease real estate for a period of twenty-one years with renewals, in their discretion.

[fol. 39] Ninth

I authorize my executors to retain any investments made by me; and also authorize them to invest any funds directed to be held in trust in first mortgages upon real estate in the City of Greater New York, no loan to exceed two-thirds of the value of the mortgaged premises as appraised by some competent real estate appraiser of said City; and also in mortgages guaranteed by a title or mortgage insurance company, or in guaranteed mortgage certificates thereof, provided the said company has been in business in said City for at least five years preceding the time of investment and shall have a capital and surplus of at least One Million Dollars ($1,000,000.00); and also in bonds and securities of the United States Government or any State, City or County that shall not, during the period of ten years prior to the date of investment, have defaulted in the payment of principal and interest on its bonded indebtedness; and also in mortgage bonds of any railroad that shall, for a period of at least five years prior to the date of investment, have paid interest on its next junior mortgage or dividends upon any of its stock.

Tenth

I authorize my said executors to treat the separate trust funds created in this, my Will, as one common fund for the purpose of investment.

Eleventh

I authorize my said executors in case of default in interest or principal of any securities to deposit the same [fol. 40] subject to the terms of any protective or reorganization agreement and accept new or substitute securities in place thereof and make the necessary payments to obtain the same.

Twelfth

I authorize my said executors in the distribution of my estate to allot in kind or appropriate any part of my estate to the payment of any bequest or devise with power conclusively to determine the value of the property so allotted.

Thirteenth

I authorize my said executors to advance from time to time to my daughters out of the principal of the trust fund created for their benefit such sum or sums as they deem proper, but the total of the advances to the two daughters together shall not exceed in amount one third of the principal of said trust fund, and such advances shall be made only in times of sickness or other important emergency. Any advances that may be so made shall be deducted without interest from the share of the issue of such daughter upon the final distribution of my estate.

Fourteenth

I appoint as executors of and trustees under this Will my daughters, Ettie B. Simonson and Nettie I. Simonson and Farmers Loan & Trust Company of the City of New York. I direct that wherever the term "executors" is employed in this Will, it shall be construed to mean trustees [fol. 41] wherever the context may require it, and shall be deemed to include in the sense both of executors and trustees only such of the above named as shall qualify upon the

probate of this Will and the survivor or survivors of them, their successor and successors, whether appointed under the power of appointment hereinafter conferred or by the court. I authorize my executors and trustees for the time being, in their discretion, to add to their number or to fill any vacancy in their number, whether such vacancy be caused by failure to qualify, resignation, death before or after me, or otherwise, such appointment to be in writing and acknowledged and to be filed in the office of the Surrogate or the Register of the County of New York, and such appointee shall thereupon possess the same rights and powers as if originally named herein as one of my executors and trustees. I further direct that every right or duty conferred or imposed upon my said executors and trustees shall be exercised by a majority thereof, said Trust Company being one of the majority, with the same effect as if all had joined therein. I further direct that none of my executors or trustees, whether originally named herein or appointed under the power of appointment herein conferred, shall be required to give any security for the faithful discharge of her or its duties either upon the qualification or during the administration of my estate, and that each of said executors and trustees shall be chargeable only with her or its own respective acts and wilful defaults.

In witness whereof, I have unto this, my Last Will and Testament, set my hand and seal in the City of New York [fol. 42] this 6th day of November Nineteen hundred and twenty-four (1924).

Albert Simonson. (L. s.)

Subscribed, sealed, published and declared by Albert Simonson, the testator, as and for his Last Will and Testament in the presence of us and each of us, who, at his request, in his presence, and in the presence of each other have hereunto subscribed our name and witnesses the day and year last above written.

Abraham L. Gutman, residing at 166 W. 87th Street, New York City. Frank F. Kirkpatrick, residing at Mt. Kisco, New York.

IN SURROGATES' COURT OF NEW YORK COUNTY

MEMORANDUM OF SURROGATE

(N. Y. L. J., Oct. 9, 1926)

FOLEY, S.:

Estate of Albert Simonson—Appeal denied. Matter of Hecht, 127 Misc. 211.

[fol. 43] AFFIDAVIT OF NO OPINION

STATE OF NEW YORK,
County of New York, ss:

ABRAHAM L. GUTMAN, being duly affirmed, deposes and says: that he is one of the attorneys for the executors of the Estate of Albert Simonson, deceased; that no opinion was rendered by the Surrogate in determining the appeal herein, other than the foregoing memorandum.

Abrm. L. Gutman.

Affirmed before me this 28th day of October, 1926. Wm. V. Goldberg, Notary Public, New York County. Clerk's No. 131, Register's No. 7006. Certificate filed in King's County. Clerk's No. 2, Register's No. 7001. Certificate filed in Bronx County. Clerk's No. 35, Register's No. 2799. Commission expires March 30, 1927.

[fol. 44] STIPULATION WAIVING CERTIFICATION

It is hereby stipulated that the foregoing are true copies of the Notice of Appeal to the Appellate Division, the order of Surrogate James A. Foley appealed from, and all the papers used by the Surrogate in making said order, and the whole thereof now on file in the office of the Clerk of the Surrogate's Court for the County of New York, and that certification thereof is hereby waived.

Dated New York, October 29, 1926.

Cohen, Gutman & Richter, Attorneys for Appellants.
Charles A. Curtin, Attorney for Respondent.

[fol. 45] In Supreme Court of New York, Appellate Division

[Title omitted]

Order of Affirmance—March 4, 1927

An appeal having been taken to this Court by the Executors from an order of the Surrogates' Court of the County of New York, entered in the Surrogates' Court on the 15th day of October, 1926, affirming an order entered on [fol. 46] the 24th day of August, 1926, fixing transfer tax, and said appeal having been argued by Mr. Abraham L. Gutman, of counsel for the appellant, and by Mr. Seth T. Cole, of counsel for the respondent; and due deliberation having been had thereon,

It is hereby unanimously ordered and adjudged that the order so appealed from be and the same is hereby affirmed with costs.

Enter.

V. J. D., J. S. C.

In Surrogates' Court of New York County

[Title omitted]

Order on Remittitur—March 30, 1927

Nettie I. Simonson et al., executors of the Last Will and Testament of Albert Simonson, deceased, having appealed to the Appellate Division of the Supreme Court of the [fol. 47] State of New York for the First Department from the order of the Surrogates' Court of the County of New York, entered on the 15th day of October, 1926, affirming the order theretofore made and entered on the 24th day of August, 1926, fixing and assessing the tax upon the transfer of the property of said decedent under the law relating to taxable transfers of property, and the said appeal having been duly argued in the said Appellate Division of the Supreme Court of the State of New York, and after due deliberation the said Appellate Division of the Supreme Court of the State of New York having directed that the order so

appealed from be affirmed with costs and disbursements, and having remitted the proceedings herein to this Court to be proceeded upon according to law,

Now, upon reading and filing the remittitur from the Appellate Division of the Supreme Court of the State of New York for the First Department and upon motion of Charles A. Curtin, attorney for the State Tax Commission, respondent, it is

Ordered that the said order of the Appellate Division of the Supreme Court of the State of New York for the First Department be and the same is made the order of this Court; and it is

Further ordered that pursuant to the aforesaid order, the State Tax Commission of the State of New York recover from the estate of Albert Simonson, deceased, the sum of $66.80 costs and disbursements as taxed.

James A. Foley, Surrogate.

[fol. 48] In Supreme Court of New York, Appellate Division

[Title omitted]

Order Granting Leave to Appeal to the Court of Appeals—April 29, 1927

The above-named executors-appellants having moved for leave to appeal to the Court of Appeals from the order of this Court entered herein on the 4th day of March, 1927,

[fol. 49] Now, upon reading and filing the notice of motion, with proof of due service thereof, and the affidavit of Abraham L. Gutman in support of said motion, and the affidavit of Charles A. Curtin in opposition thereto, and after hearing Mr. Abraham L. Gutman for the motion and Mr. Charles A. Curtin opposed,

It is hereby ordered that the said motion be and the same hereby is granted, and this Court hereby certifies that in its opinion a question of law is involved which ought to be reviewed by the Court of Appeals.

Enter.

V. J. D., J. S. C.

[fol. 50] In Surrogates' Court of New York County

[Title omitted]

Notice of Appeal to Court of Appeals

Sirs: Please take notice that pursuant to the leave granted by the Appellate Division of the Supreme Court, First Judicial Department, in the above-entitled action in an order made and filed in the office of the Clerk of that Court on the 29th day of April, 1927, the above-named executors hereby appeal to the Court of Appeals from the order of the Appellate Division of the Supreme Court for the First Department entered in the office of the Clerk of said Appellate Division on the 4th day of March, 1927, affirming an order of the Surrogate of New York County entered in the office of the Clerk of the Surrogates' Court [fol. 51] of New York County on the 15th day of October, 1926, and from the order entered in the office of the Clerk of the Surrogates' Court of New York County on the 30th day of March, 1927, on the remittitur of the said Appellate Division, and the said executors appeal from each and every part of said orders as well as from the whole thereof.

Dated May 16th, 1927.

Yours, etc., Cohen, Gutman & Richter, Attorneys for Executors-Appellants. Office & P. O. address: 74 Trinity Place, New York City.

To Charles A. Curtin, Esq., Attorney for Respondent, 220 W. 40th Street, New York City; Martin G. McCue, Esq., Clerk of the Surrogates' Court of New York County.

[fol. 52] In Surrogates' Court of New York County

[Title omitted]

Notice of Appeal to Court of Appeals

Sirs: Please take notice that the above-named executors hereby appeal to the Court of Appeals from the order of affirmance in the above-entitled action entered in the office

of the Clerk of the Appellate Division of the Supreme Court for the First Department on the 4th day of March, 1927, affirming an order of the Surrogate of New York County entered in the office of the Clerk of the Surrogates' Court of New York County on the 15th day of October, 1926, and from the order entered in the office of the Clerk of the Surrogates' Court of New York County on the 30th [fol. 53] day of March, 1927, on the remittitur of the said Appellate Division, and the said executors appeal from each and every part of said orders as well as from the whole thereof.

Dated New York City, May 16th, 1927.

Yours, etc., Cohen, Gutman & Richter, Attorneys for Executors-Appellants. Office & P. O. address: 74 Trinity Place, New York City.

To Charles A. Curtin, Esq., Attorney for Respondent, 220 W. 40th Street, New York City; Martin G. McCue, Esq., Clerk of the Surrogates' Court of New York County.

[fol. 54] In Court of Appeals of New York

[Title omitted]

Stipulation Consolidating Appeals

It is hereby stipulated that the appeals in the above-entitled action be consolidated and that they be heard on one record and that only one undertaking on appeal be required to be served and filed.

Dated New York City, May 16th, 1927.

Cohen, Gutman & Richter, Attorneys for Executors-Appellants. Charles A. Curtin, Attorney for State Tax Commission, Respondent.

[fol. 55] In Supreme Court of New York, Appellate Division, First Department, February, 1927

Victor J. Dowling, P. J.; Edgar S. K. Merrell, Francis Martin, James O'Malley, Joseph M. Proskauer, JJ.

[Titles omitted]

[fol. 56] Appeals by the respective executors from orders of the Surrogates' Court, New York County, affirming prior orders fixing transfer taxes upon the respective decedents' estates

Edmund O. Austin, of counsel (Ehrich & Mencher, attorneys) for appellants, executors of Myer Hecht, deceased.

Abraham L. Gutman, of counsel (Wm. Victor Goldberg with him on the brief; Cohen, Gutman & Richter, attorneys) for appellants, executors of Albert Simonson, deceased.

Seth T. Cole, of counsel (Charles A. Curtin, attorney for State Tax Commission) for respondent.

Russell L. Bradford, of counsel (Charles Angulo with him on the brief); Taylor, Blanc, Capron & Marsh, Amici Curiæ.

Opinion

Proskauer, J.:

These appeals concern the constitutionality and interpretation of the amendments to Section 230 of the Tax Law made by Chapter 144 of the Laws of 1925. Prior to the enactment of that statute, under this section a contingent remainder was assessed for taxation at the highest rate on the happening of any contingencies and the tax was presently levied. By Section 241 it had been provided that the State should retain and hold to the credit of the estate so much of the tax assessed upon such contingent remainders as represented the difference between the tax [fol. 57] at the highest rate and the tax upon such remainders which would be due if the contingencies had happened at the date of the appraisal. This difference, subject to the payment of interest thereon, was thus retained by the

State, with certain alternatives as to the giving of a bond, and when the remainder finally vested in possession there was a proper adjustment with the estate. It was the settled practice under this statute to compute by mortality tables the value of the life estate and the value of the remainder. An exception to this was that in certain unusual cases, where it was impossible to compute by the mortality tables furnished by the Superintendent of Insurance the present worth of the future contingent remainder, the payment of the tax was postponed until the date of vesting and the value of the remainder was then computed on the basis of the market worth of the corpus at the time of the testator's death without any deduction for the value of the intervening life estate.

Under certain earlier forms of the statute this latter method was held to be valid in Matter of Seligmann (170 App. Div. 837; affd., 219 N. Y. 656). The change effected by the 1925 statute was to require the present assessment of the contingent remainder to be "on the full, undiminished value of such property at the time of the transfer without deduction for or on account of any intervening estate or interest." It further required the tax to be computed upon this valuation.

Section 241 was also amended correspondingly to provide that the Tax Commission should retain not merely the above stated portion of the tax, but should retain the entire tax until time of vesting, in effect, as security for the [fol. 58] ultimate payment of the tax. This deposit may be made in cash or in approved bonds or securities, and until the actual vesting of the remainders the income thereof is required "to be paid over to the executor or trustee during the continuance of the trust estates."

The decedent Myer Hecht left a residuary estate in trust amounting to $322,094.37. The widow was the beneficiary for life with contingent remainder. Her life interest as fixed on the mortality tables is worth $124,957. An inheritance tax has been levied on that amount against her life interest, and a tax in addition, based on the entire corpus of the trust estate, namely, $322,094.37, has been levied on the remainder, which the State Tax Commission insists must be paid, to be held by it subject to the provisions of

Section 241, the income on this tax to be paid to the executors during the pendency of the trust. The Surrogate has approved this procedure. The appellants claim, first, that the statute of 1925 should not be so construed, and second, that if so construed it is unconstitutional.

On the question of construction the appellant contends that the Legislature could not have intended that the words "which tax shall be computed on the full, undiminished value of such property at the time of the transfer without deduction for or on account of any intervening estate or interest" should involve present taxation of a future interest at its face value; that the words "such property" must be interpreted to mean trust property, and that the statute should be construed, therefore, to mean that the value of the entire trust should not be diminished by any intervening life estate. This construction would render the amendment meaningless. The statute is too plain for such subtlety. It means exactly what it says, that contingent re- [fol. 59] maindlers are to be assessed for the purposes of the act without deduction of the value of the life estate.

We are, therefore, to determine whether this statute violates any constitutional provision. The appellants contend that where the entire fund is $322,094.37, the life estate is valued at $124,957 and the remainder is valued at $322,094.37, there has been taxed a transfer of property amounting by $124,957 more than in fact passed under the testator's will. This argument is plausible, but unsound. It ignores completely the element of time and the simple mathematical concept of present worth. If the State became at once beneficially entitled to the tax on the contingent remainder, the mathematical conclusion reached by the appellants would be correct. But the State does not presently get this tax. The income from the cash or securities deposited to cover the tax goes back to the estate during the whole duration of the trust. There is no difference between taxing a contingent remainder on the assessment of its present worth, with a tax payable presently, and taxing it, with a tax payable at the date of vesting, on its face value rather than its present worth. One is the exact arithmetical equivalent of the other. No property right is invaded by this scheme of taxation. Viewed as an entity,

the estate is not harmed, because in effect it merely deposits security for the tax. The life tenant is not harmed, because she does not lose the income by premature payment of the tax, but is safeguarded in her enjoyment of that income by the provisions of Section 241. The remainderman loses an advantage that he had before the amendment, but is deprived of nothing to which he is entitled. Prior to the amendment he would at the date of vesting have re-[fol. 60] ceived his remainder subject to a tax based on its present worth at the date of death. Under Matter of Seligmann (170 App. Div. 837; aff'd, 219 N. Y. 656), if the tax was not payable until the date of vesting, it was proper for the authorities to assess at the face value of the remainder and not on its present worth. That is exactly what is done under the revised scheme. There is no double taxation for the State does not secure the beneficial enjoyment of the tax until the date of vesting. It is true that the Seligmann case was decided on the basis of one of the exceptions to the old procedure, where the Superintendent of Insurance's tables did not furnish sufficient basis for working out the present value of the contingent remainder, but the constitutional question underlying both cases is the same. The State invades no constitutional right by assessing a contingent remainder at its face value rather than its present worth if the State postpones its beneficial collection of the tax until the date of vesting.

The Inheritance Tax Law or the Transfer Tax Law has been one of development by gradual changes tending to secure the State in its right to collect the tax without unfairness to the beneficiaries. The difficulties of practical procedure have been recognized by the courts and each successive attempt of the Legislature to clarify the procedure has been approved. If this statute provided that the assessment should be made on face value at the time of the vesting, it could not be questioned. It should be just as free from challenge where, though the assessment is presently made, the tax is beneficially taken by the State only at the time of vesting.

The orders appealed from should be affirmed with costs.

All concur.

[fol. 61] STIPULATION WAIVING CERTIFICATION

It is hereby stipulated that the foregoing are true and correct copies of the notices of appeal to the Court of Appeals, the orders of affirmance appealed from, all the papers upon which the Courts below acted in making the said orders, and the order granting leave to appeal, and the whole thereof, and certification thereof in pursuance of Section 170 of the Civil Practice Act is hereby waived.

Dated New York, June 16, 1927.

Cohen, Gutman & Richter, Attorneys for Appellants.
Charles A. Curtin, Attorney for Respondent.

[fol. 62] IN SURROGATES' COURT OF NEW YORK COUNTY

[Title omitted]

NOTICE

SIRS: Please take notice that an order of which the annexed is a copy was duly entered and filed in the office of the Clerk of the Surrogates' Court of New York County on the 15th day of December, 1927.

Dated New York, December 16th, 1927.

Yours, &c., Charles A. Curtin, Attorney for State Tax Commission. Office & Post Office address: 220 West 40th Street, Borough of Manhattan, City of New York.

To Cohen, Gutman & Richter, Esqs., Attorneys for Executors, 74 Trinity Place, New York, N. Y.

[fol. 63] IN SURROGATES' COURT OF NEW YORK COUNTY

[Title omitted]

ORDER ON REMITTITUR—Dec. 15, 1927

Nettie I. Simonson, et al., as executors of the Last Will and Testament of Albert Simonson, deceased, having ap-

pealed to the Court of Appeals of the State of New York from the order of the Appellate Division of the Supreme Court of the State of New York for the First Department entered on the 4th day of March, 1927, affirming an order entered in the Surrogates' Court of the County of New York on the 15th day of October, 1926, which said order affirmed the pro forma order made and entered in the Surrogates' Court of New York County on the 24th day of August, 1926, and from the order entered in the office of the Clerk of the Surrogates' Court of New York County on the 30th day of March, 1927, on the remittitur of the said Appellate Division, and the said appeal having been duly argued in the said Court of Appeals of the State of New York, and after due deliberation the said Court of Appeals of the State of New York having directed that [fols. 64 & 64½] the order so appealed from be affirmed with costs and disbursements, and having remitted the proceedings herein to this Court to be proceeded upon according to law,

Now, upon reading and filing the remittitur from the Court of Appeals of the State of New York, and upon motion of Charles A. Curtin, Attorney for the State Tax Commission, respondent, it is

Ordered that the said order of the Court of Appeals of the State of New York be and the same is made the order of this Court, and it is

Further ordered that pursuant to the aforesaid order the State Tax Commission of the State of New York recover from the estate of Albert Simonson, deceased, the sum of $104.88 costs and disbursements as taxed.

John P. O'Brien, Surrogate.

Original filed Dec. 16th, 1927. A true copy. Martin G. McCue, Clerk of Surrogates' Court. (New York Surrogate's Seal.)

[fols. 65-66½] Bond on writ of error for $500.00, approved and filed February 9, 1928, omitted in printing.

[fol. 67] In Court of Appeals of New York

[Title omitted]

Petition for Writ of Error—Filed Feb. 9, 1928

To the Hon. Benjamin N. Cardozo, Chief Judge of the Court of Appeals of the State of New York:

The petition of Nettie I. Simonson, Ettie B. Simonson and Farmers' Loan & Trust Company, as Executors of the Last Will and Testament of Albert Simonson, deceased, by Cohen, Gutman and Richter, their attorneys, respectfully shows:

(1) That on or about the 22nd day of November, 1927, the Court of Appeals of the State of New York made and entered a Final Order, Judgment and Decree herein, in favor of the State Tax Commission of New York and against your petitioners above named, and that thereafter in accordance with the law and practice of said State of New York the said Final Order, Judgment and Decree of the Court of Appeals, and the original record in this cause were remitted to the Surrogates' Court of the County of New York, wherein they now remain with directions to enter the said Final Order, Judgment and Decree and carry the same into execution, and that thereupon and on or about the 15th day of December, 1927, the said Final Order, Judgment and Decree of the Court of Appeals was entered in the said Surrogates' Court in conformity with the directions of said Court of Appeals, and was made the Final Order and Decree of said Surrogates' Court, as well as of the said Court of Appeals.

[fol. 68] (2) That in the said Final Order and Decree and the proceedings had in this cause certain errors were committed to the prejudice of your petitioners, Nettie I. Simonson, Ettie B. Simonson and Farmers' Loan and Trust Company as Executors of the Last Will and Testament of Albert Simonson, deceased, and those whom they represent, all of which will appear in more detail in the Assignment of Errors which is filed in this cause with this Petition.

(3) That said Court of Appeals of the State of New York is the highest Court of said State of New York in

which a decision in this suit and matter could be had and said Final Order and Decree entered in the said Surrogates' Court, as aforesaid, is the final Order and Decree which can be made or entered in this matter.

(4) That a printed copy of the record in the said Court of Appeals is herewith submitted, together with a certified copy of the said Final Order, Judgment and Decree of said Court of Appeals, and a certified copy of the Order of the Surrogates' Court of the County of New York, making the said Final Order, Judgment and Decree that of said Surrogates' Court as well as of said Court of Appeals. That said Court of Appeals did not render any opinion in this cause.

(5) That this suit or cause was commenced in the Surrogates' Court of the County of New York by your said petitioners as Executors as aforesaid, pursuant to the requirements of the laws of the State of New York, for the purpose of having ascertained and fixed the amount of the transfer tax payable to the State of New York by the Estate of said Albert Simonson, deceased; and that in the [fol. 69] said suit, culminating in the Final Order and Decree aforesaid there was and is duly drawn into question the validity of a statute of the State of New York, to wit: Chapter 144 of the Laws of 1925 of the State of New York, entitled "An Act to Amend the Tax Laws, in Relation to the Transfer Tax on Contingent Remainders," amending Sections 230 and 241 of the Tax Law of the State of New York, on the ground of its being repugnant to and in violation of the Fourteenth Amendment to the Constitution of the United States, and that said decision of said Court of Appeals was in favor of the validity of said statute.

Wherefore Nettie I. Simonson, Ettie B. Simonson and Farmers' Loan and Trust Company, as Executors of the Last Will and Testament of Albert Simonson, deceased, petition and pray that a Writ of Error from the Supreme Court of the United States may issue in this behalf to the Surrogates' Court of the County of New York, State of New York and the Surrogates thereof for the correction of errors and the reversal of the Final Order and Decree

so complained of, and that a copy of the record, proceedings and papers in this matter, duly authenticated, may be sent to the Supreme Court of the United States.

Dated New York, N. Y., this 7 day of February, 1928.

Nettie I. Simonson, Ettie B. Simonson, and Farmers' Loan & Trust Company, as Executors of the Last Will and Testament of Albert Simonson, Deceased, Petitioners, by Cohen, Gutman & Richter, Attorneys for Petitioners. Office and Post Office address: 74 Trinity Place, Borough of Manhattan, New York, N. Y., and Abraham L. Gutman.

[fol. 69½] [File endorsement omitted.]

[fol. 70] In Court of Appeals of New York

[Title omitted]

Assignment of Errors—Filed February 9, 1928

Now come Nettie I. Simonson, Ettie B. Simonson and Farmers' Loan and Trust Company, as executors of the Last Will and Testament of Albert Simonson, deceased, by Cohen, Gutman & Richter, their attorneys, and in connection with their petition for a writ of error show that in the record and final order, judgment and decree of the Court of Appeals of the State of New York and of the Surrogates' Court of the County of New York, upon a remittitur from said Court of Appeals in the above entitled matter wherein the petitioners and the State Tax Commission of New York are parties there is manifest error in this, to wit:

First, That the court erred in holding that Chapter 144 of the Laws of 1925 of the State of New York being an Act entitled, "An Act to Amend the Tax Law in Relation to the Transfer Tax on Contingent Remainders," approved March 16th, 1925 and Article 10 of the Tax Law and said state insofar as it is amended thereby are constitutional and are not in conflict with or in violation of the 14th amendment to the Constitution of the United States and do not deprive the petitioners, the estate of Albert Simonson and all parties having an interest therein of property

without due process of law, or of the equal protection of the laws.

Second. That the final order and decree herein is in conflict with and in violation of the provisions of the 14th [fol. 71] amendment to the Constitution of the United States.

Third. That the court erred in refusing to hold that the said Chapter 144 of the Laws of 1925 and said Tax Law insofar as it was amended thereby are repugnant to, in conflict with and in violation of the 14th amendment to the Constitution of the United States, in that thereunder there is imposed upon the transfer of the estate of said decedent a tax measured by property which was never owned or transferred by said decedent either at the time of his death or at any other time.

Fourth. That the court erred in refusing to hold that said Chapter 144 of the Laws of 1925 and the said Tax Law insofar as it is amended thereby are repugnant to, in conflict with and in violation of the 14th amendment to the Constitution of the United States in that the ax imposed thereunder operates unequally upon persons of the same class and in that the said statutes discriminate arbitrarily and unjustly in favor of one as against another member of the same class and in that under said statutes there are established classifications for the purpose of said tax which are based on supposed differences which bear no reasonable or just relation to the subject in respect to which such classifications are made.

Fifth. That the court erred in ordering and adjudging that the petitioners pay to the State Tax Commission of New York the sum of $13,996.59 as and for the transfer tax due to the State of New York pursuant to the Tax Law as amended by Chapter 144 of the Laws of 1925 in that insofar as said tax was imposed upon the transfer of the remainder interests mentioned and described in the taxing order herein, said order and judgment deprives the petitioners and those whom they represent, of property without due process of law and deprives them of the equal protection [fol. 72] of the laws, in violation of the 14th amendment to the Constitution of the United States.

Sixth. That the court erred in sustaining the order and judgment dated August 24th, 1926 approving a certain computation of the transfer tax due the State of New York from the estate of Albert Simonson, deceased, insofar as said order and judgment and said computation impose a transfer tax upon the transfer of the remainder interests under the Will of said decedent, in that said order and judgment and computation to that extent deprive your petitioners and those whom they represent of property without due process of law and of the equal protection of the laws, in violation of the 14th amendment to the Constitution of the United States.

Seventh. That the court erred in refusing to reverse the order appealed from.

Wherefore, Nettie I. Simonson, Ettie B. Simonson and the Farmers' Loan and Trust Company, as executors of the Last Will and Testament of Albert Simonson, deceased, pray that the final order and decree aforesaid may be reversed and annulled and for such other and further relief as may be just and proper.

Nettie I. Simonson, Ettie B. Simonson, and Farmers' Loan and Trust Company, as Executors of the Last Will and Testament of Albert Simonson, Deceased, Petitioners, by Cohen, Gutman & Richter, Attorneys for Petitioners, Office and P. O. Address 74 Trinity Place, Borough of Manhattan, New York City, and Abraham L. Gutman.

[fol. 72½] [File endorsement omitted.]

[fol. 73] In Court of Appeals of New York

[Title omitted]

Order Allowing Writ of Error—Filed February 9, 1928

The above entitled matter coming on to be heard upon the petition of Nettie I. Simonson, Ettie B. Simonson and Farmers' Loan & Trust Company as executors of the Last Will and Testament of Albert Simonson, deceased, for a

writ of error from the Supreme Court of the United States to the Surrogates' Court of the County of New York, State of New York and the Surrogates thereof and upon examination of said petition and the record of said matter and desiring to give the petitioners an opportunity to present to the Supreme Court of the United States the questions presented by the record in said matter;

It is ordered, that a writ of error be and is hereby allowed from the Supreme Court of the United States to the Surrogates' Court, County of New York, State of New York and the Surrogates thereof.

Dated February 7th, 1928.

Benjamin N. Cardozo, Chief Judge of the New York Court of Appeals.

[fol. 73½] [File endorsement omitted.]

[fols. 74 & 74½] Citation, in usual form, showing service on Attorney for State Tax Commission, Filed February 9, 1928, omitted in printing.

[fol. 75] In Court of Appeals of New York

Writ of Error—Filed Feb. 9, 1928

United States of America, ss:

The President of the United States of America to the Honorable the Surrogates of the Surrogates' Court of the County of New York, State of New York, Greeting:

Because in the record and proceedings, as also in the rendition of a final order or decree which is in the said Surrogates' Court, upon a remittitur from the Court of Appeals of the State of New York, before you or one of you, being the highest court of law or equity of the said State, in which an appeal or petition could be had in the said matter of the transfer tax upon the estate of Albert Simonson, deceased, wherein was drawn in question the validity of a statute of, or an authority exercised under

said statute upon the ground of their being repugnant to the Constitution of the United States and the decision was in favor of their validity; a manifest error hath happened to the great damage of the said Nettie I. Simonson, Ettie B. Simonson and Farmers' Loan & Trust Company as executors of the Last Will and Testament of Albert Simonson, deceased, as is stated and appears by their complaint. We, being willing that such error, if any hath happened, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the Supreme Court of the United States at Washington within thirty (30) days from the date hereof. That the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States [fol. 76] should be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, this 7th day of February in the year of our Lord one thousand nine hundred and twenty eight.

Alex Gilchrist, Clerk of the United States District Court of the Southern District of New York. (Seal, District Court of the United States, Southern District of N. Y.)

The foregoing writ is hereby allowed. Benjamin N. Cardozo, Chief Judge of the New York Court of Appeals.

[fol. 76½] [File endorsement omitted.]

[fol. 77] In Surrogates' Court of New York County

[Title omitted]

Affidavit of No Opinion—Filed Feb. 21, 1928

State of New York,
County of New York, ss:

Abraham L. Gutman, being duly affirmed, deposes and

says: That he is an attorney at law and a member of the firm of Cohen, Gutman & Richter, attorneys for the plaintiffs-in-error in the above entitled matter and is familiar with the proceedings had therein; that no opinion in the above entitled matter was rendered by the Court of Appeals of the State of New York in affirming the order of the Appellate Division of the Supreme Court of the State of New York, First Department, and that no opinion was rendered by the Surrogates' Court of the County of New York in rendering its order upon the remittitur from the said Court of Appeals.

Abraham L. Gutman.

Affirmed before me this 20th day of February, 1928. Wm. V. Goldberg, Notary Public, New York County. Clerk's No. 149. Register's No. 9154. Commission expires March 30th, 1929.

[fol. 77½] [File endorsement omitted.]

[fol. 78] In Court of Appeals of New York City

[Title omitted]

Stipulation re Transcript of Record—Filed Feb. 21, 1928

It is hereby stipulated by and between the attorneys for the parties in the above entitled proceeding that the papers to be transmitted to the Supreme Court of the United States by the Clerk of the Surrogates' Court, County of New York, State of New York, pursuant to a writ of error allowed by the Hon. Benjamin N. Cardozo, Chief Judge of the New York Court of Appeals on February 7th, 1928, and issued on that day in the proceeding between the parties above mentioned, are the following, and that this stipulation shall take the place of the praecipe required to be filed by counsel for the respective parties, under and pursuant to rule 9 of the rules of the Supreme Court of the United States:

First. The remittitur of the Court of Appeals to the Surrogates' Court, New York County, dated November 23rd, 1927, including the printed record used in the Court of Appeals in the above proceeding.

Second. The order on the remittitur of the Court of Appeals entered in the office of the Clerk of the Surrogates' Court, New York County, on December 15th, 1927.

Third. The petition for writ of error, assignment of errors, bond, order allowing writ of error, and writ of error filed with the Clerk of the Surrogates' Court, New York County, on February 9th, 1928.

[fol. 79] Fourth. The citation to the respondents dated February 7th, 1928, filed with the Clerk of the Surrogates' Court, New York County, and served on February 9th, 1928.

Fifth. The affidavit of no opinion.

Sixth. The present stipulation.

It is further stipulated that the Clerk of the Surrogates' Court, New York County, may certify the transcript of record together with all of the papers used in connection with the writ of error without further formality.

Dated New York City, February 20, 1928.

Cohen, Gutman & Richter, Attorneys for Petitioners.
Charles A. Curtin, Attorney for State Tax Commission, Respondents.

[fol. 79½] [File endorsement omitted.]

[fol. 80] In Supreme Court of the United States

Statement of Points to be Relied Upon and Designation to Print Entire Record—Filed March 7, 1928

Now come Nettie I. Simonson, Ettie B. Simonson and Farmers' Loan and Trust Company as Executors of the Last Will and Testament of Albert Simonson, deceased, by Abraham L. Gutman, their attorney, and state that they

intend to rely upon the points as set forth in the assignment of errors filed herein in prosecution of their writ of error herein, and that the parts of the record to be printed herein shall be the entire transcript of the record as certified by the Clerk of the Surrogates' Court of the County of New York, State of New York.

Dated March 5, 1928.

Abraham L. Gutman.

Office and Post-Office address: No. 74 Trinity Place, New York, N. Y.

[fol. 81] Due and timely service of a copy of the within Statement and Designation on the 5th day of March, 1928, is hereby admitted.

Charles A. Curtin, Attorney for State Tax Commission, Defendants-in-Error.

[fol. 82] [File endorsement omitted.]

Endorsed on cover: File No. 33,262. New York Surrogates' Court of New York County. Term No. 80. Nettie I. Simonson, Ettie B. Simonson, and Farmers Loan & Trust Company, etc., plaintiffs in error, vs. State Tax Commission of New York. Filed February 27th, 1928. File No. 33,262.